

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**BRYAN HULL and
ANGELIQUE HULL,** §
Plaintiffs, §
v. §
**OCWEN LOAN SERVICING, LLC and
U.S. BANK NATIONAL ASSOCIATION
AS TRUSTEE FOR THE REGISTERED
HOLDERS OF AEGIS ASSET-BACKED
SECURITIES TRUST MORTGAGE
PASS-THROUGH CERTIFICATES
SERIES 2005-4,** §
Defendants. §
No. 3:12-cv-1098-M (BF)

ORDER ACCEPTING THE FINDINGS, CONCLUSIONS, AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

On May 9, 2013, the United States Magistrate Judge issued Findings, Conclusions, and a Recommendation that the Court deny Defendants Ocwen Loan Servicing, LLC and U.S. Bank, National Association's Rule 12(b)(6) motion to dismiss this civil action arising out of foreclosure proceedings initiated real property located in Richardson, Texas. Defendants timely filed written objections thereto. Accordingly, the Court has conducted an independent review of the record and has considered *de novo* those portions of the Magistrate Judge's Findings, Conclusions, and Recommendation to which Defendants objected. *See* 28 U.S.C. § 636(b)(1).

The Court notes that Defendants raise arguments in their objections that were not presented in their motion for consideration by the Magistrate Judge before he issued his Findings, Conclusions, and Recommendation. In particular, Defendants contend in their objections that MERS was the mortgagee of the property at issue when the underlying mortgage loan closed and, thus, under Texas

law, the assignment of the Deed of Trust to Wachovia Bank in 2008 was valid. However, Defendants are not entitled to raise arguments for the first time in their objections to the Magistrate Judge's Findings, Conclusions, and Recommendation that were not asserted in their motion. *See Cupit v. Whitley*, 28 F.3d 532, 535 (5th Cir. 1994) (arguments which could have been raised before the Magistrate Judge, but are raised for the first time in objections before the District Court, are waived); *see also Paterson-Leitch Co., Inc. v. Mass. Mun. Wholesale Elec., Inc.*, 840 F.2d 985, 990-91 (1st Cir. 1988) (party's entitlement to *de novo* review before District Court upon filing objections to Report and Recommendation of Magistrate Judge does not entitle him to raise issues which were not adequately presented to Magistrate Judge). The Court therefore does not consider Defendants' new arguments raised in their objections to the Magistrate Judge's Findings, Conclusions, and Recommendation.

Accordingly, the Court **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate Judge (Doc. 18) and **DENIES** Defendants' Rule 12(b)(6) Motion to Dismiss (Doc. 11).

SO ORDERED this 19th day of June, 2013.



BARBARA M. G. LYNN
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF TEXAS